

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

United States of America, Complainant v. Gauriel Vanounou, d/b/a Surf's Up Custom-T-Shirts, Respondent; 8 USC 1324a Proceeding; Case No. 88100111.

ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION

By order dated May 4, 1989 I granted the Complainant's March 24, 1989 motion for partial summary decision against the Respondent, Gauriel Vanounou, d/b/a Surf's Up Custom-T-Shirts. In doing so, I ordered Vanounou to pay a civil money penalty of \$5,500 within 14 days from the date of my partial summary decision. At page 6 footnote 9 of the partial summary decision I noted that ``Review of this final order may be obtained by following the procedure set forth at 28 CFR 68.52(a).''

Instead of filing (within the allotted 5 days) a request for review with the Chief Administrative Hearing Officer pursuant to 28 CFR 68.52(a), Respondent Vanounou has filed¹ with me his ``Motion To Reconsider And Set Aside Order For Partial Summary Judgement [sic].'' The Complainant has filed an extensive opposition, dated July 3, 1989, supported by a [sworn] factual declaration, dated June 29, 1989, of INS Special Agent Alfonso Moreno III.

Vanounou expressly does not attack my findings of verification violations, but rather requests reconsideration of the amount of civil money penalty. Respondent Vanounou attaches a purported copy of a federal income tax return from 1988, dated June 6, 1989, and refers to paragraphs 6 and 8 in his answer to the complaint in contending that the civil money penalty of \$500 per violation is excessive. Respondent's factual assertions and documentary evidence are not submitted in the form of an affidavit or sworn statement by Vanounou, his accountant, or other person with personal or supervisory knowledge of the facts asserted.

¹Although the certificate of service by attorney Linda Reyna Yanez asserts a June 16, 1989 mailing, the envelope bears a June 24, 1989 postmark. The document was filed-marked at my Atlanta office on June 27, 1989. Finally, the document filed is, improperly, a copy only and not the original.

First, it is questionable whether I have any jurisdiction to consider Respondent's motion. Aside from referring to 28 CFR 68.1. Respondent fails to cite the rule or rules conferring jurisdiction.

Second, even if I have jurisdiction, Respondent fails to show how his motion is timely, and if tardy, why I should consider an untimely motion.

Third, if I were to consider Respondent's motion for reconsideration, I would deny it as lacking in merit.

Fourth, Respondent's alternative request for ``a reasonable pay out schedule in lieu of a lump sum payment'' of the \$5,500 civil money penalty is a matter properly addressed to the Complainant at this point.

For these reasons I DENY Respondent's motion for reconsideration.

SO ORDERED: This July 21, 1989 at Atlanta, Georgia.

RICHARD J. LINTON,
Administrative Law Judge